



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500  
DENVER, COLORADO 80202-2466

Ref: 8WM-WQ

MEMORANDUM

TO: Bill Frazier

FROM: Bradley Miller

RE: Comments on the Draft F&W Coordination Act, Migratory Bird Treaty Act and Endangered Species Act Compliance Document

DATE: April 17, 1992

The following is a summary of the 404-related concerns identified during my review of the referenced Draft document for the 881 Hillside French Drain Project.

In the title, there is no recognition of the Clean Water Act. While the requirement for obtaining permits from the Corps of Engineers for remedial actions is waived by EPA policy, there must still be compliance with the substantive requirements of the Clean Water Act. Avoidance of resources and wetland mitigation for should be included in this document or some supplemental document for compliance with the substantive requirements of the Section 404 regulatory program.

The introductory paragraph on page 1 suggests the 881 Hillside French Drain has not impacted wetlands or other resources. As I recall, the work has already occurred and most, if not all, of the impacts are existing. This misleading statement should be corrected.

Also in the introductory paragraph on page 1, this draft document is referred to as a "habitat mitigation plan". If this document is intended to address wetland impacts for compliance with the Clean Water Act, functions of wetland areas other than habitat must be addressed. Such functions may include water quality enhancement, channel stabilization, ground water recharge, etc.

Paragraph two in part 2.2 indicates that only one wetland was identified in surveys prior to construction. My recollection of the survey data was that two or three wetlands were identified. It may be the case that only one of these was impacted by the construction, but, as I recall, there was more than one wetland identified.

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ADMIN RECORD

A-DU01-000347

How was it determined that the water source for the 1200m<sup>2</sup> wetland was from the Building 881 footer drains and runoff from road surfaces rather than preexisting ground water seeps? With the large number of ground water seeps along the sides of other drainages on the site, it would appear as if some of the water may have been naturally occurring.

The last paragraph on page 1 refers to Figure 1 as "show[ing] the former locations of these habitats". Again, wetlands perform functions other than just habitat.

In Section 3.0 entitled "Mitigation Design", the part on wetlands states that restoration of the 1200m<sup>2</sup> wetland is not feasible due to uncertainties regarding availability of water and possible interference with the operation of the french drain system. I was not aware of any problems with the operation of the french drain system which might develop from restoration of the wetland. In fact, I thought the potential introduction of supplemental water into the system would actually enhance the performance of the french drain by flushing contaminated ground water into the collection system. Regarding the uncertainty of the availability of water for the wetland, any changes in this part of the site are likely to occur far in the future. The wetland could be restored immediately and, if the water source would be impacted in the future, an alternative wetland mitigation plan could be developed.

In Section 3.1 entitled "Wetland", the last paragraph again states that restoration of the 1200m<sup>2</sup> wetland is not feasible. I have the same concerns about this statement as I did for the last such statement.

Section 4.1, "Mitigation Implementation--Wetland" states that 1-3 years may elapse before initiation of any wetland mitigation efforts. While this kind of delay may be satisfactory for compliance with the Fish & Wildlife Coordination Act, Migratory Bird Treaty Act, and Endangered Species Act; it is not sufficient to meet the substantive requirements of the Clean Water Act's Section 404 regulatory program. In some cases, wetland mitigation is required to be implemented before wetland impacts are allowed. In most other cases, wetland mitigation is required to occur concurrently with wetland impacts. A proposal for wetland mitigation to occur years after the impacts is neither acceptable nor does it comply with the substantive requirements of the Clean Water Act.

I am available to meet with you or representatives of DOR and EG&G, either in the office or in the field, if there are questions about these comments or if additional information becomes available. If comments or additional information is submitted in writing, I would, of course, provide my review and comments.